THE ARMY OF THE UNITED STATES NOT TO BE EMPLOYED AS A POLICE TO ENFORCE THE LAWS OF THE CONQUERORS OF KANSAS.

SPEECH

OF

WILLIAM H. SEWARD,

ON

THE ARMY BILL.

IN THE SENATE OF THE UNITED STATES, AUGUST 7, 1856.

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Mr. President: This is a bill appropriating about twelve millions of dollars, to defray the expenses of the military establishment of the United States, for the ensuing fiscal year. Its form and effect are those which distinguish a general appropriation bill for the support of the army, such as is annually passed by Congress. Only one exception to it, as it came to the Senate from the House of Representatives, has been taken here. It contains what is practically an inhibition of the employment of the army of the United States, by the President, to enforce the so-called laws of the alleged Legislature of the Territory of Kansas. The Senate regards that inhibition as an obnoxious feature, and has, by what is called an amendment, proposed to strike it from the bill, overruling therein my vote; and the Senate now proposes to pass the bill thus altered here, and to remit it to the House of Representatives, for concurrence in the alteration. In the hope that that House will insist on the prohibition which has been disapproved here, and that the Senate will, in case of conflict, ultimately recede, I shall vote against the passage of the bill in its present shape.

In submitting my reasons for this course, I have little need to tread in the several courses of argument which have been opened by distinguished Senators, who have gone before me in this debate. Certainly, however, I shall attempt to emulate the examples of the honorable Senators from Virginia and South Carolina, [Mr. Hunter and Mr. Butler,] by avoiding remarks in any degree personal, because, on an occasion of such grave importance, although I may not be able to act with wisdom, I am sure I can so far practice self-control as to debate with decency, and deport myself with dignity. I shall neither defend nor arraign any political party, because I should vote on this occasion just as I am now going to vote, if not merely one of the parties, but all of the parties in the country, stood arrayed against me.

I shall not reply to any of the criticisms which have been bestowed upon the inhibition proposed by the House of Representatives, nor shall I attempt to reconcile that inhibition with other bills, which have been passed by the House of Representatives, and sent to this House for concurrence. I shall not even stop to vindicate my own consistency of action, in regard to the Territory of Kansas; because, first, I am not to assume that what now seems an opening disagreement between the Senate and the House of Representatives, will ripen into a case of decided conflict; and because, secondly, if it shall so ripen, then there will be time for argument at every stage of the disagreement; while its entire progress and consummation will necessarily be searchingly reviewed, throughout the length and breadth of the country, and the conflict itself will thereafter stand a landmark for all time in the history of the Republic. I shall endeavor to confine myself closely to the questions which are immediately involved, at this hour, in a debate which, in the event which has been apprehended, will survive all existing interests and all living statesmen.

The prohibition of the employment of the army, to enforce alleged statutes in Kansas, which the

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House of Representatives proposes, and which the Senate disapproves, grows out of the conflict of opinion which divides the Senate unequally, which divides the House of Representatives itself nearly equally, and which, if the prohibition itself expresses the opinion of a majority of that House, separates it from the Senate, and from the President of the United States. It is manifestly a conflict which divides the country by a parallel of latitude. In this conflict, one party maintains, as I do, that the legislation, and the Territorial Legislature itself, of Kansas, are absolutely void. The other party, on the contrary, insists that the legislation and Legislature of the Territory of Kansas are valid, and must remain so until they shall be constitutionally superseded or abrogated.

The Senator from Virginia [Mr. HUNTER] argues that the act of the House of Representatives, in inserting the prohibition in this bill, is revolutionary, and that persistence in it would effect a change of the Constitution of the Government. I refrain from arguing that question elaborately now, because, while I am satisfied, from my knowledge of the temper and habit of the Senate, that it is likely enough to adhere to the course which it has indicated, I am at the same time by no means so certain that the House of Representatives will not ultimately recede from the ground which, by the act of a bare majority, at all times unreliable during the present session, it has assumed. I speak with the utmost respect towards the House of Representatives, and with entire confidence in the patriotic motives of all its members; but, I must confess that, in all questions concerning Freedom and Slavery in the United States, I have seen Houses of Representatives, when brought into conflict with the Senate of the United States, recede too often and retreat too far to allow me to assume that in this case the present House of Representatives will maintain the high position it has assumed with firmness and perseverance to the end. I saw a House of Representatives, in 1850, which was delegated and practically pledged to prohibit the extension of Slavery within the unorganized Territories of the United States, then newly acquired from Mexico, refuse to perform that great duty, and enter into a compromise, which, however intended, practically led to the abandonment of all those Territories to universal desecration by Slavery. I saw a House of Representatives, in 1854, forget the sacred reverence for Freedom of those by whom it was constituted, and abrogate the time-honored law under which the Territories of Kansas and Nebraska had until that time remained safe, amid the wreck which followed the unfortunate compromise of 1850, and thus prepare the way for that invasion by Slavery of all that yet remained for the sway of Freedom in the ancient domain of Louisiana, which has since taken place in Kansas.

Sir, ever since I adopted for myself the policy of opposing the spread of Slavery in the train of our national banner, consecrated to equal and universal Freedom, my hopes have been fixed, not on existing Presidents, Senates, or Houses of Representatives, but on future Presidents and future Congresses—and my hopes and faith grow stronger and stronger, as each succeeding President, Senate, and House of Representatives, fails to adopt and establish that policy, so eminently constitutional and conservative. My hopes and my faith thus grow on disappointment, because I see that by degrees, which are marked, although the progress seems slow, my countrymen, who alone create Presidents and Congresses, are coming to apprehend the wisdom and justice of that beneficent policy, and to accept it. The shortcomings of the present House of Representatives do not discourage me. I do not even hold that body responsible. I know how, in the very midst of the canvass in which its members were elected, the public mind was misled, and diverted to the discussion of false and fraudulent issues concerning the principles and policy of the Church of Rome, and the temper, disposition, and conduct, of aliens incorporated into the Republic. But although I hold the present House of Representatives excusable, I must, nevertheless, in assigning its true character, be allowed to say of it, that it is like the moon, which presents a broad surface, all smooth and luminous when seen at a distance, but covered with rough and dark mountains when brought near to the eye by the telescope. I shall vote, therefore, on this occasion, with the House of Representatives, against a majority of the Senate, careless whether that House itself shall, like other Houses of Representatives which have gone before it, renounce and repudiate its own decision which I thus sustain, and complaisantly range itself with the Senate and the President of the United States, against myself and those Senators who shall have gone with me to its support.

Mr. President, the subject under consideration is legitimately within the jurisdiction of Congress, and consequently within the jurisdiction of the House of Representatives. There must be authority somewhere to decide whether the Territorial Legislature of Kansas is a legal and constitutional body, and whether its statutes are

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valid. The President of the United States has no authority to decide those questions definitely, because the decision involves an act of sovereign legislation within the constitutional sphere of Congress. The Judiciary cannot decisively determine those questions, because their own determinations, in such a case, may be modified or reversed, and set aside, by a constitutional legislative enactment, and because the Judiciary has no power to apply the means necessary to give effect to its decisions.

The subject is an actual Government of the Territory of Kansas, to be established and maintained by constitutional laws. All legislative power over Kansas, as well as all legislative power whatever permitted by the Constitution of the United States, is vested in Congress, and of course in the House of Representatives, co-ordinately with the Senate, and subject to a veto of the President. The House of Representatives may constitutionally pass a bill abrogating the pretended legislation and Legislature of Kansas, or declaring them to be already absolutely void. The greater includes the less. The House of Representatives may therefore lawfully pass a bill prohibiting the employment of the army of the United States in executing laws in Kansas, which it deems pernicious, no matter by whom those laws were made.

Since the House of Representatives has power to pass such a bill distinctly, it has power, also, to place an equivalent prohibition in any bill which it has constitutional power to pass. And so it has a constitutional right to place the prohibition in the annual army appropriation bill.

I grant that this mode of reaching the object proposed is in some respects an unusual one, and in some respects an inconvenient one. It is not therefore, however, an unconstitutional one, or even necessarily a wrong one.

It is a right one, if it is necessary to effect the object desired, and if that object is one that is in itself just, and eminently important to the peace and happiness of the country, or to the security of the liberties of the people. The House of Representatives, moreover, is entitled to judge and determine, for itself, whether the proceeding is thus necessary, and whether the object of it is thus important. It is true, that the Senate may dissent from the House, and refuse to concur in the prohibition. In that case, each of the two Houses exercises an independent right of its own, and upon its own proper responsibility to the people. If the conflict shall continue to the end, and the bill therefore shall fail, the people will decide between the two Houses, in the elections which will follow, and they will take care to bring them to an agreement in harmony with the popular decision.

The proceeding in the present case is thus necessary, and its object is thus important. Pretended but invalid laws are enacted by usurpation, and enforced by the President of the United States, in the Territory of Kansas, with the terror if not with an actual application of the military arm of the Government. At least, this is the case assumed by the House of Representatives. The case is altogether a new one. It has not occurred before. It has never even been supposed possible that such a case could happen in a Territory of the United States. The idea has never before entered into the mind of an American statesmen, that citizens of one State could with armed force enter any other State or Territory, and by fraud or force usurp its government, and establish a tyranny over its people, much less that a President of the United States would be found to sanction such a subversion of State authority or of Federal authority; and still less, that a President thus sanctioning it would employ the standing army to maintain the odious usurpation and tyranny.

Sir, the mere fact, in this case, that the army is required to be employed to execute alleged laws in Kansas, is enough to raise a presumption that those laws are either wrong in principle or destitute of constitutional authority, and ought not to be executed.

The Territory of Kansas, although not a State, is or ought to be, nevertheless, a civil community, with a republican system of government. In other words, it is *de jure*, and ought to be *de facto*, a Republic — an American Republic, existing under and by virtue of the Constitution of the United States. If the laws which are to be executed there are really the statutes of such a republican government truly existing there, then those laws were made by the people of Kansas by their own voluntary act. According to the theory of our Government, these laws will be acquiesced in by that people, and executed with their own consent against all offenders, by means of merely civil police, without the aid of the army of the United States. The army of the United States is not a mere institution of domestic police; nor is it a true or proper function of the army to execute the domestic laws of the several States and Territories. Its legitimate and proper functions are to repel foreign invasion,

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and suppress insurrections of the native Indian tribes. It is only an occasional and incidental function of that army, to suppress insurrections of citizens seldom expected to occur.

This Capitol is surrounded by a national metropolis, and its streets, lanes, and alleys, are doubtless filled with misery and guilt, adequate to the generation of all sorts of crimes. Yet the laws prescribed for municipal government within the District of Columbia are executed without the aid of the army of the United States. Neither House of Congress, nor the Common Council of Washington, nor the Common Council of Georgetown, nor the President of the United States, nor the Marshal of the District of Columbia, nor yet the Mayors of either of those cities, nor any court within the District, is attended by any armed force or detachment, or protected even by an armed sentinel.

Why is this so? It is because the people acquiesce, and the laws execute themselves. This case of the District of Columbia is the strongest which can be presented against the principle for which I contend, for the people of the District are actually disfranchised, out of regard to the security of the Federal Government.

Look into the States—into Maryland on one side of the Federal Capital, and into Virginia on the other; into Delaware as you ascend northward, into North Carolina as you descend southward, into Pennsylvania and into South Carolina, into New Jersey and into Georgia, even into Maine and into Texas; go eastward—go westward, throughout all the States, throughout even the Territories, Minnesota, Utah, Washington, Oregon, and New Mexico—everywhere throughout the Republic, from the Gulf of St. Lawrence to the Gulf of Mexico, from the Atlantic coast to the Pacific ocean—everywhere, except in Kansas, the people are dwelling in peaceful submission to the laws which they themselves have established, free from any intrusion of the army of the United States. The time was, and that not long ago, when a proposition to employ the standing army of the United States as a domestic police would have been universally denounced as a premature revelation of a plot, darkly contrived in the chambers of conspiracy, to subvert the liberties of the people, and to overthrow the Republic itself.

The Republic stands upon a fundamental principle, that the people, in the exercise of equal rights, will establish only just and equal laws, and that their own free and enlightened public opinion is the only legitimate reliance for the maintenance and execution of such laws. This principle is not even peculiar to ourselves—it lies at the foundation of the government of every free people on earth. It is public opinion, not the Imperial army, that executes the laws of the realm in England, Scotland, and Ireland. Whenever France is free, it is public opinion that executes the laws of her republican legislature. It is public opinion that executes the laws in all the Cantons of Switzerland. The British constitution is quite as jealous of standing armies as a police, as our own. Government there, indeed, maintains standing armies, as it does a great naval force, but it employs the one, as it does the other, exclusively for defence or for conquest against foreign States. Fearful lest the armed power of the State might be turned against the people to enforce obnoxious edicts or statutes, the British constitution forbids that any regular army whatever shall be tolerated, on any pretence. The considerable military force which is maintained in different and distant parts of the Empire, only exists by a suspension of that part of the constitution, which suspension is renewed by Parliament from year to year, and never for more than one year at a time. Civil liberty, and a standing army for the purposes of civil police, have never yet stood together, and never can stand together. If I am to choose, sir, between upholding laws, in any part of this Republic, which cannot be maintained without a standing army, or relinquishing the laws themselves, I give up the laws at once, by whomsoever they are made, and by whatever authority; for either our system of government is radically wrong, or such laws are unjust, unequal, and pernicious.

Such is the presumption against the pretended laws of Kansas, which arises out of the proposition in debate. I shall not, however, in so grave a case, leave my argument to rest upon mere presumption. Listen to me while I recite some of the principal statutes of the Territorial Legislature of Kansas, which the Senate, differing from the House of Representatives, proposes to enforce at the point of the bayonet against citizens of the United States:

"No person who is *conscientiously opposed* to the holding of slaves, or who *does not admit* the right to hold slaves in this Territory, shall be a juror in any cause in which the right to hold any person in slavery is involved, nor in any cause in which any injury done to, or committed by, any slave, is in issue, nor in any criminal proceeding for the violation of any law enacted for the protection of slave property, and for the punishment of *crime* committed against the right to such property."

Here is an edict which subverts that old Saxon

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institution, which is essential and indispensable, not only in all republican systems of government, but even in every free State; whatever may be the form of its government. The question has been asked a thousand times, Why does the republican system fail in Spanish America? The answer is truly given as often, that the republican system fails there, because the trial by jury has never existed in Spanish America, and cannot be introduced there.

Lend your ear, if you please, while I repeat another of these statutes of the Territory of Kansas:

"*All officers* elected or appointed under any existing or subsequently-enacted laws of this Territory, shall take and subscribe the following oath of office: 'I, ——, do solemnly swear, upon the holy Evangelists of Almighty God, that I will *support* the Constitution of the United States, and that I will *support and sustain* the provisions of an act entitled "An act to organize the Territories of Nebraska and Kansas," and the provisions of the law of the United States commonly known as the "*Fugitive Slave Law*," and faithfully and impartially, and to the best of my ability, demean myself in the discharge of my duties in the office of ——; so help me God.'"

Here is an edict which establishes a test oath, based on political opinion, and, by disfranchising one class of citizens, devolves the government upon another class, and thus subverts that principle of equality, without which no truly republican government has ever existed, or ever can exist.

Excuse me, Senators, for calling to your notice a third chapter in the Territorial code of Kansas:

"If any free person, *by speaking* or by writing, assert or *maintain that persons have not the right to hold slaves in this Territory*, or shall introduce into this Territory, print, publish, write, circulate, or cause to be introduced into this Territory, written, printed, published, or circulated, in this Territory, *any book*, paper, magazine, pamphlet, or circular, *containing any denial* of the right of persons to hold slaves in this Territory, such person shall be deemed GUILTY OF FELONY, and punished by imprisonment at hard labor for a term of not less than two years."

"If any person *print, write*, introduce into, publish, *or circulate*, or cause to be *brought into*, printed, written, published, or *circulated*, or shall knowingly aid or assist in bringing into, printing, publishing, or circulating, within this Territory, any *book, paper*, pamphlet, magazine, handbill, or circular, containing any statements, arguments, *opinion, sentiment*, doctrine, advice, or innuendo, *calculated* to produce a *disorderly*, dangerous, or rebellious disaffection among the slaves in this Territory, or to induce such slaves to escape from the service of their masters, or to resist their authority, he shall be guilty of felony, and be punished by imprisonment and hard labor for a term not less than five years."

Sir, ever since the debate about the extension of Slavery in the Territories of the United States began, I have from year to year, from month to month, and sometimes even from day to day, in this place, and at other posts of public duty, spoken, written, printed, published, and circulated speeches, books, and papers, which constructively would be pronounced felonious, if such a law as this had been in force at the place where that duty was performed. I have not hesitated, in the spirit of a free man, and, so far as I can claim such characters, under the responsibilities of a statesman and a Christian, to scatter broadcast over the land, and even throughout the Territory of Kansas itself, statements, opinions, and sentiments, which, though designed for a purpose different from that mentioned in this edict, I doubt not would by prejudiced judicial construction be held to fall within its inhibition. Whatever other Senators may choose to do, I shall not direct the President of the United States to employ a standing army in destroying the fruits of Freedom which spring from seeds I have conscientiously sown with my own free hand. This statute, sir, if so you insist on calling it, subverts the liberty of the press and the liberty of speech. Where on earth is there a free Government where the press is shackled and speech is strangled? When the Republic of France was subverted by the First Consul, what else did he do, but shackle the press and stifle speech. When the second Napoleon restored the Empire on the ruins of the later Republic of France, what else did he do, than to shackle the press and strangle debate? When Santa Anna seized the Government of Mexico, and converted it into a dictatorship, what more had he to do than shackle the press and stifle political debate?

Behold, Senators, another of these statutes. In the chapter which treats of the writ of habeas corpus we have this limitation:

"No negro or mulatto, held as a slave within this Territory, or lawfully arrested as a fugitive from service from another State or Territory, shall be discharged, nor shall his *right of freedom* be had, under the provisions of this act."

This is an edict, which suspends the writ of habeas corpus. It relates indeed to a degraded class of society, but still the writ which is taken away from that class is the writ of habeas corpus, and those who are to be deprived of it by the edict may be freemen. The State that begins with denying the habeas corpus to the humblest and most obscure of freemen, will not be long in reaching a more indiscriminate proscription.

It ought to be sufficient objection here, against all these statutes, that they conflict with the Constitution of the United States, the highest law recognised in this place. I myself denounce them for that reason, as I denounce them also

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because they are repugnant to the laws of nature, as recognised by nearly all civilized States.

Pardon, I pray you, Senators, the prolixity of the next chapter, which I extract from the Kansas code:

"Every person who may be sentenced by any court of competent jurisdiction, under any law in force within this Territory, to punishment by confinement and hard labor, shall be deemed a convict, and shall immediately, under the charge of the keeper of such jail or public prison, or under the charge of such person as the keeper of such jail or public prison may select, be put to hard labor, as in the first section of this act specified, (to wit, 'on the streets, roads, public buildings, or other public works of the Territory'—[Sec. 1, page 146;] and such keeper or other person, having charge of such convict, shall cause such convict, while engaged at such labor, to be securely confined by a *chain, six feet in length*, of not less than four-sixteenths nor more than three-eighths of an inch links, with a *round ball of iron*, of not less than four nor more than six inches in diameter, attached, which chain shall be securely fastened to *the ankle* of such convict with a strong lock and key; and such keeper, or other person, having charge of such convict, may, if necessary, confine such convict, while so engaged at hard labor, by *other chains*, or other means, in his discretion, so as to keep such convict secure, and prevent his escape; and when there shall be *two* or more convicts under the charge of such keeper, or other person, such convicts shall be *fastened together* by strong chains, with strong locks and keys, during the time such convicts shall be engaged in hard labor without the walls of any jail or prison."

I have devoted, heretofore, no unimportant part of my life to mitigating the severity of penal codes. The Senate of the United States now informs me, that if I desire the privilege of voting for this bill, which is designed to maintain the army of the United States in its integrity, I must consent to send that army into the Territory of Kansas, to fasten chains of *iron* six feet long, with balls of *iron* four inches in diameter, with strong locks, upon the limbs of offenders guilty of speaking, printing, and publishing, principles and opinions subversive of the system of Slavery.

Sir, I have no excessive tenderness in regard to taking life or liberty as a forfeiture to the majesty of the laws, for the invasion of the peace and safety of society. Yet I do say, nevertheless, that I regard chains and balls, and all such implements and instruments of Slavery, with a detestation so profound, that I will sooner take chains upon my own frame, and wear them through what may remain of my own pilgrimage here, than impose them, even where punishment is deserved, upon the limbs of my fellow-men. I cannot consent to go backward, and restore barbarism to the penal code of the United States, even for the sake of an appropriation to maintain the army of the United States for a single year.

The Kansas code rises, as you advance through it, to a climax of inhumanity. Here is the next chapter:

"If any person shall *aid or assist* in enticing, decoying, or *persuading*, or carrying away, or *sending out* of this Territory, any slave belonging to another, with intent to procure or effect the freedom of such slave, or with intent to deprive the owner thereof of the services of such slave, he shall be adjudged guilty of grand larceny, and on conviction thereof *shall suffer death*, or be imprisoned at hard labor for not less than ten years."

Pray tell me, Senators, what you think of that. This statute has been promulgated in Kansas, a Territory of the United States. It can have become a law there only, directly or indirectly, through the exercise of the legislative power of the Congress of the United States. The Constitution of the United States confers upon Congress no power whatever to consign any human being to a condition of bondage or slavery to another human being, but, on the contrary, prohibits the exercise of a power so inhuman and barbarous.

The Constitution of the United States, consequently, confers on Congress no power, directly or indirectly, to make it a crime in one man to persuade another, reduced to bondage or slavery, to seek his freedom. I repudiate this pretended law, therefore, and I will not consent to send the army of the United States to Kansas to execute it.

Mr. MASON. Will the Senator allow me to ask him whether the law to which he has just adverted is not a law of the State of Missouri, adopted by the Territory of Kansas?

Mr. SEWARD. I presume it is, but I do not know that fact.

Mr. MASON. Does not the Senator know the fact, that it is part of the body of laws of the State of Missouri, adopted by the Territory of Kansas?

Mr. SEWARD. I say I presume it to be so; I do not know the fact. Sir, I am here asked, while voting twelve millions to support the Federal army, to make it a crime against the United States, punishable with death, to persuade a slave to escape from bondage, and to command the army to execute that punishment. I cannot do that.

Mr. REID. I dislike to interrupt the Senator, but there is one point on which I desire to know his opinion, for it is important, certainly, to one section of the Union. The course of the Senator's argument seems to incline to the opinion,

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on his part, that it is no crime to persuade or to entice a negro slave to run away from his master. Is that the opinion of the Senator from New York?

Mr. SEWARD. There is no Senator for whom I have more respect than the honorable Senator from North Carolina, but I have a rule—which is, to adhere to my own line of argument. I am defending my vote, on a bill before the Senate. I shall go into the discussion of no collateral question, further than it is necessarily involved in the argument which the occasion requires. I call your attention to another of these enactments:

"If any person shall *entice, decoy*, or carry away out of this Territory, any slave belonging to another, with intent to deprive the owner thereof of the services of such slave, or with intent to effect or procure the freedom of such slave, he shall be adjudged guilty of grand larceny, and, on conviction thereof, *shall suffer* DEATH, *or be imprisoned at hard labor for not less than ten years.*"

There is no larceny of property, of any kind, which in my judgment demands punishment by death. Certainly, I shall not agree to a law which shall inflict that extreme punishment for constructive larceny, in a case where it is at least a disputed point in ethics, whether the offence is *malum in se.*

Here is another chapter:

"If any slave shall commit petit larceny, or shall steal any neat cattle, sheep, or hog, or be guilty of any misdemeanor, or other offence punishable under the provisions of this act only by fine or imprisonment in a county jail, or by both such fine and imprisonment, he shall, *instead of such punishment*, be punished, if a male, by stripes on his bare back not exceeding thirty-nine, or if a female, by imprisonment in a county jail not exceeding twenty-one days, or by stripes not exceeding twenty-one, at the discretion of the justice."

With repentance and atonement, Mr. President, I may hope to be forgiven for inflicting blows upon the person of a fellow-man, equal in strength and vigor to myself. I should have no hope to be forgiven, much less to retain my own self-respect, if, on any occasion, under any circumstances, or upon any pretext, I should ever consent to apply, or authorize another to apply, a lash to the naked back of a weak, defenceless, helpless woman.

Sir, call these provisions which I have recited by what name you will—edicts, ordinances, or statutes—they are the laws which the House of Representatives says shall not be enforced in Kansas by the army of the United States. I give my thanks to the House of Representatives, sincere and hearty thanks. I salute the House of Representatives with the homage of my profound respect. It has vindicated the Constitution of my country; it has vindicated the cause of Freedom; it has vindicated the cause of humanity. Even though it shall tamely rescind this vindication to-morrow, when it shall come into conflict with the Senate of the United States, yet I shall nevertheless regard this proviso, standing in that case only for a single day, as an omen of more earnest and firm legislation in that great forum. When, hereafter, one shall be looking through the pages of statute laws affecting the African race, for a period of more than a quarter of a century, he will regard this ephemeral recognition of the equality of men with the affection and hope which the traveller feels when approaching a green spot in the deserts of Arabia. It must be other Senators, not I, who shall consent to blast this oasis, and disappoint all the hopes that already are bursting the bud upon it.

Mr. President, although the fact is clear, that the pretended laws in Kansas can only be executed by armed force, and therefore are obnoxious to a presumption that they are founded in injustice; and although those laws, upon searching examination, are found to be subversive of the Constitution, and in conflict with all the sentiments of humanity, the whole case of the House of Representatives has nevertheless not yet been stated. The proceedings which have hitherto taken place in executing those laws have been unconstitutional in their character, and attended with grinding oppression and cruel severity. The Senator from Virginia has asked me, whether such laws do not exist in Missouri.

Mr. MASON. The Senator from Virginia asked you whether a law on which you were commenting was not a law of the State of Missouri, copied by the Territory of Kansas.

Mr. SEWARD. Take the question in the shape in which the honorable Senator repeats it. I suppose such laws exist in that State, and in other States. I have this to say for those States, and for the United States—that a Federal standing army has never been employed in executing such laws in those States. And how have these atrocious laws been executed in Kansas? The marshal of the Territory, an officer dependent on the President of the United States, has enrolled as a volunteer militia, at the expense of the Federal Treasury, an armed band of confessed propagandists of Slavery from other States; and this so-called militia, but really unconstitutional regular force, has been converted into a *posse comitatus* to execute these atrocious statutes by intimidation, or by force, as the na-

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ture of the resistance encountered seemed to require. This has been the form of Executive action. What has been the conduct of the Judicial department? Courts of the United States have permitted grand juries to find and have maintained indictments unknown to the laws of the United States, to the common law, and to the laws of all civilized countries—an indictment of a tavern as a nuisance, because the political opinions of its lodgers were obnoxious; an indictment of a bridge over a river for a nuisance, because those who passed over it were of opinion that the establishment of Slavery in the Territory was injurious to its prosperity; indictments even of printing presses as nuisances, because the political opinions which they promulgated were favorable to the establishment of a Free State Government. Either with a warrant from the courts, or without a warrant, but with their connivance, bands of soldiers, with arms belonging to the United States, and enrolled under its flag, and directed by its marshal, combining with other bands of armed invaders from without the Territory, and without even the pretence of a trial, much less of a judgment, have abated the alleged nuisance of a tavern by levelling it to the ground, and the pretended nuisances of the free presses by casting type and presses and compositors' desks into the Kansas river.

Moreover, when the citizens, whose obedience to these laws was demanded, sought relief in the only constitutional way which remained open to them, by establishing conditionally, and subject to the assent of Congress, to be afterwards obtained, a State Government, provisional Executive officers, and a provisional Legislature, indictments for constructive treason were found in the same courts, by packed grand juries, against these provisional Executive officers, and a detachment of the army of the United States entered the Legislative Halls, and expelled the representatives of the people from their seats. During the intense heat of this almost endless summer, a regiment of Federal cavalry performs its evolutions in ranging over the prairies of Kansas, holding in its camp, as prisoners under martial law, without bail or mainprize, not less than ten citizens, thus indicted in those Federal courts for the pretended crime of constructive treason. The penalty of treason, under the laws of the United States, is death. What chance for justice attends those citizens? I will show you. The judge who is to try them procured the indictments against them, by a charge to a packed grand jury, in these words:

"This Territory was organized by an act of Congress, and, so far, its authority is from the United States. It has a Legislature, elected in pursuance of that organic act. This Legislature, being an instrument of Congress by which it governs the Territory, has passed laws. These laws, therefore, are of *United States authority and making*; and all that resist these laws, resist the power and authority of the United States, and are therefore *guilty of high treason*.

"Now, gentlemen, if you find that any persons have resisted these laws, then you *must*, under your oaths, find bills against such persons for high treason. If you find that no such resistance has been made, but that combinations have been formed for the purpose of resisting them, and individuals of influence and notoriety have been aiding and abetting in such combinations, then *must* you still find bills for constructive treason," &c.

What will it avail their defence, before such a court and such a judge, that the Constitution of the United States declares, directly and explicitly, that treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

Thus you see, Senators, that the Executive authority, not content with simple oppression, has seized upon the Judiciary, and corrupted and degraded it, for the purpose of executing these pretended and intolerable laws of Kansas. The judge who presides in the Territorial courts is a creature of the President of the United States, and holds his office by the tenure of Executive pleasure. While the sword of Executive power is converted in Kansas into an assassin's dagger, the ermine of Justice is stained with the vilest of contaminations. What cause is there for surprise, then, in the administration of Government in Kansas, under such laws, and in a manner so intolerable, that a civil war has been brought about by affidavits, an armed force has been employed in executing process for contempt, and an unauthorized and illegal detachment is enrolled in the service of the United States, and employed in abating domestic, social, and political institutions, under the name of nuisances? What wonder is it that a city has been besieged with fire and sword, because it was supposed to contain within its dwellings individuals who denied the legality and obligation of the pretended laws? What wonder that a State, a provisional State, erected in harmony with the Constitution and with custom, and waiting our assent for admission into the Union, has been subverted by a mingled process of indictments and martial demonstrations against constructive treason? Who can fail to see, through the cloud which Executive usurpation and Judicial misconstruction have raised, for the purpose of cover-

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ing these transactions in Kansas, that it is devotion to Freedom which alone constitutes any crime in that Territory, in the view of its judges, its ministerial officers, and of the President of the United States? And that that crime, in whatever it may be committed, in their judgment, constitutes treason? Who does not see that devotion to Freedom, applauded in all the world besides, in Kansas is a crime to be expiated with death?

I have argued thus far, Mr. President, from the nature of the pretended laws of Kansas, and from the cruel and illegal severity with which they are executed. I shall draw my next argument from the want of constitutional authority, on the part of the Legislature which enacted these laws. The report of the Kansas Investigating Committee of the House of Representatives, consisting of the evidence of witnesses, numbered by hundreds, and biassed against the conclusion at which the House of Representatives has arrived, has established the fact upon which I insisted in opening this debate on the 9th of April last, that the Legislature of Kansas was chosen, not by the people, but by an armed invasion from adjoining States, which seized the ballot-boxes, usurped the elective franchise, and by fraud and force organized a Government; thereby subverting the organic law and the authority of the United States. Sir, at another time, and under different circumstances, a single invader, after the manner adopted by Colonel William Walker in Nicaragua, might have entered the Territory of Kansas with an armed force, and established a successful usurpation there. Let me suppose that he had done so, and had promulgated these identical statutes in the name of the Territory of Kansas, would you hold, would the Senate hold, would the President of the United States hold, that such a Government, thus established, was a legal one, and that statutes thus ordained were valid and obligatory? That is the present case. It differs only in this: that in the case supposed there is a single conqueror, only one local and reckless usurper, while in the case of Kansas an associated band are the conquerors and usurpers. The Territorial Legislature of Kansas stands on the foundations of fraud and force. It attempts to draw over itself the organic law enacted in 1854, but it is equally subversive of the liberties of the people of Kansas, and of that organic law, and of the authority of the United States. The Legislature and Territorial Government of Kansas stand on no better footing than a *coup d'etat*, a revolution. When honorable Senators from the other side of this Chamber tell me that I am leading the people of Kansas into revolution, I fearlessly reply to them, that they have stood idly by, and seen a revolution effected there. Doubtless, they have acted with a sincerity of purpose and patriotism equal to my own. They see the facts, and the tendency of events, in a light different from that in which these facts and transactions present themselves to me. They therefore insist upon maintaining that revolution, and giving it the sanction of Congress, by authorizing the standing army of the United States to execute the laws which that revolution has promulgated. The House of Representatives, on the contrary, denounces the revolution, and stands upon the authority of the United States, and, for the purpose of putting an end to that revolution and restoring Federal authority, insists that these pretended laws shall not be executed. In this great controversy, I leave the majority of the Senate, and take my stand by the side of the House of Representatives.

You warn me, that if we do not recognise these revolutionary authorities in Kansas, the Territory will be without an organized State at all, and will relapse into anarchy. The House of Representatives meets you boldly on that issue, and replies, that if there are not laws in force, exclusive of these pretended statutes, adequate to the purposes of civil government in Kansas, they have invited you, in two separate bills, which they have sent up here, widely variant in character, but each adapted to the case, to provide for the restoration of regular and constitutional authority in Kansas. One bill proposes to recognise and establish the State of Kansas, under the Topeka Constitution, and the other proposes to reorganize the Territorial Legislature, with proper amendments of the organic law. Thus far, you have practically refused to accept either of these propositions. If, when Congress shall have adjourned, the result shall be that Kansas is left without the protection of adequate laws and civil authority, look you to that. The responsibility will not rest on me, nor on the House of Representatives.

I desire, Mr. President, on this great occasion—perhaps the last one of full debate during the present session of Congress—to deliver my whole mind upon this important subject. I add, therefore, that the tendency and end—I will not say object—of the revolution which has been effected in Kansas, which has been effected by her conquerors, through the countenance and aid of

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the President of the United States, are not of such a character as to reconcile me to that revolution. That end is the establishment of human slavery within the Territory of Kansas. If I should go with you and the majority of the Senate in emasculating this army bill, as it came from the House of Representatives, I should thereby show that I was at least indifferent on so great an issue. Sir, I could never forgive myself hereafter, when reviewing the course of my public life, if I had assented to inflict upon even the present settlers of Kansas, few and poor, and scattered through its forests and prairies, as they are, what I deem the mischiefs and evils of a system of compulsory labor, excluding, as we know by experience that it always does, the intelligent labor of free men.

But it is not merely on to-day and on this generation that I am looking. I cannot restrain my eyes from the effort, at least, to penetrate through a period of twenty-five years—of fifty years—of a hundred years—of even two hundred years—so far, at least, as a statesman's vision ought to reach beyond the horizon that screens the future from common observation. All along and through that dimly-explored vista, I see rising up before me hundreds of thousands, millions, even tens of millions, of countrymen, receiving their fortunes and fates, as they are being shaped by the action of the Congress of the United States, in this hour of languor, at the close of a weary day, near the end of a protracted and tedious session. I shall not, indeed, meet them here on the earth, but I shall meet them all on that day when I shall give up the final account of that stewardship which my country has confided to me. If I were now to consent to such an act, with my opinions and convictions, the fruit of early patriotic and Christian teachings, matured by reading of history; by observation in States where Freedom flourishes, as well as in societies where Slavery is tolerated; by experience throughout a life which already approaches the climacteric; by travel in my own and foreign lands; by reflection under the discipline of conscience and the responsibilities of duty; by social converse; and by a thousand collisions of debate—I should be obliged, when that last day shall come to me, (as it must come to all,) to call upon the rocks and the mountains to fall upon me, and crush me and my name, detested then by myself, into that endless oblivion which is the most unwelcome of all evils, real or imaginary, to the thoughts of a generous and illuminated human mind. Policy forbids me to do it. Justice forbids me to do it. Humanity forbids me to do it. And the Constitution of my country—wisest of all Constitutions—most equal of all Constitutions—most humane of all Constitutions which the inventive genius of man has ever framed—forbids me to do it.

I have arrived now, Mr. President, at another question much debated here, namely, whether the inhibition which is contained in the bill as it came from the House of Representatives, and to which the Senate objects, is germane to the bill. If that inhibition really has the importance with which I have invested it, then the question whether it is germane or not is worthless and trivial.

Sir, in an act of such high necessity as the resistance and suppression of revolution subversive of civil government and public liberty, questions of parliamentary form sink into insignificance. But the question *is* germane. It is a normal provision, of a character identical with the bill itself. The bill proposes an appropriation to defray the expenses of the army of the United States for one year, and necessarily contemplates the character and nature of the service in which the army is to be employed. It is framed with such foresight as the House of Representatives can exercise of the places where the army shall be employed, whether in the States or in the Territories, or in foreign campaigns, and of the nature and character of its employments—whether training in camp, building fortifications, suppressing Indian insurrections, repelling invasions, or carrying the banner of our stars and stripes in conquest over an enemy's battalions in hostile countries. It is confessed that Congress, and not the President of the United States, has power to direct the destination and employment of the army in all these respects.

And, now, what does the provision propose? Simply this: that while it leaves the discretion of the President free exercise to employ the army where he shall think fit, in maintaining Federal laws, and, consistently with existing statutes, the laws of every State in the Union, and of every Territory in the Union, he shall not do this one thing—employ that army in executing the pretended and obnoxious statutes of the usurpation in Kansas. On the point whether this inhibition is germane to the bill, you, Senators, think that you are making an issue with the House of Representatives, on which, when you go down before the people, the Senate will stand and the House will fall. I know well the conservative power that is lodged in twelve millions of dollars, Spanish milled dollars; but I know also the virtue, the

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conservative virtue, which resides in the hearts and consciences of twenty-five millions of American freemen. The people of the United States, in this case, will never stop to ask whether the inhibition was germane or not. They are not yet prepared to receive their own money back at your hands, on condition of the surrender of liberty or the denial of justice. But if I grant that the people will stand by you, and condemn the House of Representatives, still in that case I take my stand with the House of Representatives. The American people have a persevering way of correcting to-day their error of yesterday. When the temporary inconvenience which they shall have suffered from your act of withholding from them the twelve millions of dollars which ought to be disbursed to them through the operations of the army, shall have passed away, they will call you to account for the injustice which will have inflicted that injury, and will then vindicate their fidelity to Liberty and Justice, while sternly bestowing upon you the censure you have provoked.

Whatever may be the decision, early or late, of the American people, the judgment now to be given will go for review to the tribunal of the civilized world. It needs little of either learning or foresight, to anticipate the decision of that tribunal, on the issue whether the Senate is right in using bayonets and gunpowder to execute unconstitutional and tyrannical laws, tending to carry Slavery into free Territories, or the House of Representatives is right in maintaining the Constitution and the universality of Freedom.

The whole question of the propriety of the inhibition hinges on the point whether, under the circumstances, it is necessary. I appeal on that point to the Senate itself, to the country, and to the world. Either the inhibition must be continued in the bill, and so take effect, or else the army will be employed to enforce these atrocious laws. Every other effort to defeat and to abrogate them has failed. This attempt is the last that can be made. It is therefore this remedy for the revolution in Kansas which we must adopt, or no remedy. I go, therefore, with the House of Representatives, for the inhibition which it proposes.

You reply, that if the House of Representatives persevere, the bill will fail, and thus the action of the Government will be arrested. But although the House shall persevere in the right, the bill will not fail, and the action of the Government will not be arrested, unless the Senate shall persevere in the wrong. If both shall persevere, and the action of the Government shall be arrested, on whom will the responsibility fall? Must the House necessarily surrender its own convictions, and adopt yours, in all cases, whether they are right or wrong? If so, pray tell me Senators, what is the use of a House of Representatives at all? Sir, the Senate will find, if it shall assume the position of defiance against the House, that it has not weakened the strength of the House of Representatives, but perilled its own.

By the letter of the Constitution, the House of Representatives has exclusive right to originate all bills for raising revenue. By custom, inherited from Great Britain, and unbroken since the adoption of the Federal Constitution, the House of Representatives, exclusively, originates all general appropriation bills. This exclusive right and custom of originating general appropriation bills involves at least an equal right, on the part of the House of Representatives, to limit or direct the application of the moneys appropriated. The House, in view of the revolution inaugurated in Kansas by the President, with the aid of the army of the United States, and maintained by the Senate, might lawfully, if in its discretion it should deem such a course expedient, refuse to appropriate any money whatever for the support of the army. The greater includes the less. The House may therefore attach the prohibition as a condition of the grant of supplies for the army. The honorable Senator from Maine [Mr. FESSENDEN] has sagely said, in the course of his excellent speech, that the House has, by reason of its constitution, a peculiar and superior fitness for passing on the question involved in this debate. Its members are fresh from the people, and they go hence directly, to render an account to the people of the administration of the National Treasury. We of the Senate are so far removed, by the duration of our terms of office, as practically to be in a measure irresponsible. The House of Representatives is constituted by direct election by the people themselves. We of the Senate are sent here by the Legislatures of the respective States. They are great political bodies, and justly represented here as such, to check, if need be, the too volatile action of the people through the House of Representatives. But they are corporations, nevertheless, and the Senate is a body representing corporations.

Moreover, the Senate, by force of its constitution as a council of the President, in appointments to office and in the conduct of foreign affairs, is more readily inclined towards combination with the President, and of course to dependence upon him, than the House of Repre-

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sentatives. It is to the House of Representatives, therefore, that the people must look, and it is upon that House, and not upon the Senate, that the people must rely mainly for the rescue of public Liberty, if the time shall ever come when that Liberty shall be endangered, with design or otherwise, by the exercise of the Executive power.

Thus far, Mr. President, I have treated this subject as one involving only the interests of the people of the Territory of Kansas. But you will see at once, without any amplification on my part, that you are establishing, by way of precedent, a system of government for not merely that Territory, but all the Territories, present and future, within the United States. It is worth while to see what that system is. It is the system of popular sovereignty, founded on the abnegation of Congressional authority, attempted by the Kansas and Nebraska Act of 1854. But it is that system of popular sovereignty, with the principle of popular sovereignty left out, and that of Executive power, exercised with fraud and armed force, substituted in its place. Since we have entered upon a career of territorial aggrandizement, as Rome, and Britain, and Spain did, respectively, we can look forward to no period when what we call Territories, but what they called Provinces or Colonies, will not constitute a considerable part of our dominion, and be a theatre for the exercise of cupidity and the display of ambition. Let Congress now effectually resign the Territories to military control by the President, or by Generals appointed by him, and two more acts will bring this grand national drama of ours to its close. The first of those acts will be the subversion of Liberty in the remaining Territories; and then, the Rubicon easily passed, the second will be the establishment of an Empire on the ruins of the whole Republic.

But how is the Government to be arrested, even if this army bill should fail, through your persevering dissent from the House of Representatives? Is the army of the United States, indeed and essentially, a civil institution—a necessary and indispensable institution, in our republican system? On the contrary, it is an exception, an anomaly, an antagonistic institution, tolerated, but wisely and justly regarded with jealousy and apprehension. We maintain a standing army in time of war, to suppress Indian insurrections, or to repel foreign invasions; and we maintain the same standing army in time of peace, only because it is wise in peace to be prepared for war. But, whether in peace or war, we maintain it not without some measure of hazard to constitutional liberty. Happily, the Indian disturbances within our borders have been suppressed; and if they had not been, the smallest measure of gentleness and charity towards the decaying tribes would more effectually secure the blessings of peace, so far as they are concerned, than the employment of many legions. Happily, also, the dark cloud that seemed gathering over us from the East, when this session commenced in December last, has been dispersed, and we have now a sure prospect of peace with all foreign nations for many years to come. The army of the United States is therefore immediately useful or necessary now only as a police, to execute municipal laws. If the founders of the Constitution had been told, that within seventy years from the day on which they laid its solid foundations, and raised its majestic columns, a standing army would have been found necessary and indispensable merely to execute municipal laws, they would have turned shuddering away from the massive despotism which they had erected.

Sir, eleven days hence, Congress will adjourn, and it will come back again one hundred and eight days after that time. No serious disaster, nor even any great public inconvenience, can happen within that period. Congress will be here in ample time to provide, if it shall be necessary, for the public safety, for expelling Great Britain from Central America, for conquering Cuba, and for bringing into subordination any insurrectionary Indian tribes. Everybody will know that every dollar we owe to contractors, purveyors, merchants, makers of gunpowder or muskets, or founders of cannon, as well as every dollar we owe to soldiers or officers, for pay or for rations, is guarantied by the national faith, and on that faith money can be raised without any considerable discount.

And, now, what other inconveniences are to result from a failure to pass the army bill? We are told that law and order will be lost, and anarchy will prevail in the Territory of Kansas, if the army be not employed there to keep the peace, and execute the Territorial laws. Look, I pray you, through this report of the Investigating Committee, drawn out to the length of twelve hundred pages, filled with details of invasions, robberies, mobs, murders, and conflagrations, and tell me what anarchy could happen, in the absence of martial law, worse than the anarchy which has marked its establishment in the Territory?

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Answer me still further, what measure of anarchy could reconcile, or ought to reconcile American citizens to a surrender of constitutional Liberty in any part of the Republic?

Answer me further, what is that measure of tranquillity and quiet that a republican people ought to seek, or can wisely enjoy? It is not the dead quiet, the stagnant tranquillity of cowardly submission to usurpation and despotism, but it is just so much of peace, quiet, and tranquillity, as is consistent with the preservation of constitutional Liberty. It would be a hard alternative, but, if the Senate should insist on forcing on me, or on the people I represent, the choice between peace under despotism, or turbulence with Freedom, then I must say, promptly and fearlessly, give me so much of safety as I can have, and yet remain a freeman, and keep all quiet and all safety beyond that for those who are willing to be slaves.

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